

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SEANDERYL ANTONIO CRAWFORD,

Defendant-Appellant.

UNPUBLISHED

June 12, 2007

No. 267728

Wayne Circuit Court

LC No. 05-009090-01

Before: White, P.J., and Saad and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions following a bench trial of armed robbery (three counts), MCL 750.529, first-degree home invasion, MCL 750.110a, felonious assault, MCL 750.82, impersonating a police officer, MCL 750.215(3), and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to concurrent prison sentences of 14 to 30 years for each armed robbery conviction, 10 to 20 years for the first-degree home invasion conviction, and 2 to 4 years for both the felonious assault and impersonating a police officer convictions, plus two years' consecutive imprisonment for the felony-firearm conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I.

Sufficiency of the Evidence

Defendant first argues that his felony firearm conviction must be reversed because it was based on clearly erroneous findings and because there was insufficient evidence. We disagree.¹

¹ Defendant also claims the verdict is against the great weight of the evidence. Because he did not move for a new trial below on that latter ground, appellate review of the claim is precluded. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). However, no special steps are required to preserve a challenge to the sufficiency of the evidence. *People v Cain*, 238 Mich App 95, 116-117; 605 NW2d 28 (1999).

In reviewing a challenge to the sufficiency of the evidence after a bench trial, this Court views the evidence de novo in the light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39; 642 NW2d 339 (2002). Conflicting evidence must be resolved in favor of the prosecution. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). The elements of the crime can be proved by circumstantial evidence and reasonable inferences based on that evidence, and "[t]he scope of review is the same whether the evidence is direct or circumstantial." *People v Nowak*, 462 Mich 392, 400; 614 NW2d 78 (2000). This Court must give deference to the factfinder's superior ability to determine the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

The elements of felony-firearm are that the defendant carried or possessed a firearm during the commission or attempted commission of a felony. MCL 750.227b(1); *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). To establish possession of a firearm, the prosecution must establish either actual or constructive possession of the firearm. *Id.*

According to three eyewitnesses, defendant and an accomplice entered their home claiming to be police officers and stole several items, including money. In particular, defendant challenges the credibility of one witness, Dallas Thomas, who testified that defendant was armed with a handgun. According to Thomas, defendant identified himself as a police officer, pointed a gun at Thomas's face, and pushed him into the house. Thomas testified he was looking at defendant "dead in his face" as defendant held the gun up to him. Defendant, however, argues that Thomas was not credible because he admitted having a seizure during the incident and because other, more credible witnesses testified that only defendant's accomplice was carrying a gun, and wearing a badge.

Viewing the evidence in a light most favorable to the prosecution and giving proper deference to the trial court's credibility determinations, the evidence was sufficient to establish that defendant used a firearm during the commission of the armed robbery. In reviewing a challenge to the sufficiency of the evidence, "[q]uestions of credibility are left to the trier of fact and will not be resolved anew by this Court." *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). This Court defers to the superior position of the trier of fact to resolve questions of credibility on the basis of its firsthand observations. *People v Hawkins*, 245 Mich App 439, 458-459; 628 NW2d 105 (2001).

Here, Thomas was questioned about his ability to remember what happened due to his seizure. He testified unequivocally that defendant was carrying a gun. The trial court determined that Thomas was a credible witness, and this Court will not disturb this determination. Further, we are not persuaded by defendant's argument that Thomas's testimony was inconsistent with that of the two other eyewitnesses, who testified that they saw only defendant's accomplice carrying a gun. Neither of those witnesses saw defendant enter the home and restrain Thomas. Therefore, the trial court may reasonably have believed Thomas's testimony that defendant used a gun when he entered the house, and reasonably inferred that defendant either put the weapon away or gave it to his accomplice after Thomas was restrained. We cannot conclude on this record that the court's findings are clearly erroneous.

II.

Double Jeopardy

In a supplemental brief filed in propria persona pursuant to Administrative Order 2004-06, defendant argues that his constitutional right against double jeopardy was violated by his convictions for armed robbery and the lesser-included offense of felonious assault. We disagree.

Pursuant to the Double Jeopardy Clauses of the state and federal constitutions, individuals cannot be twice placed in jeopardy for the same offense. US Const, Am V; Const 1963, art 1, § 15; *People v Nutt*, 469 Mich 565, 574; 677 NW2d 1 (2004). “Where two statutes prohibit violations of the *same* societal norm, albeit in a different manner, as a general principle it can be concluded that the Legislature did not intend multiple punishments.” *People v Herron*, 464 Mich 593, 605; 628 NW2d 528 (2001).

Defendant argues that his sentences for armed robbery and felonious assault constitute multiple punishments for the same offense. In *People v Yarbrough*, 107 Mich App 332, 334-336; 309 NW2d 602 (1981), this Court determined that “[t]he elements of felonious assault are included within armed robbery for purposes of double jeopardy analysis.” An assault may be punished separately from an armed robbery, if the facts show that the offenses occurred at separate times. *Id.* at 336. This is consistent with the general rule that there is no double jeopardy violation “if one crime is complete before the other takes place, even if the offenses share common elements or one constitutes a lesser offense of the other.” *People v Lugo*, 214 Mich App 699, 708; 542 NW2d 921 (1995). There is also no double jeopardy issue when crimes are committed against different persons, even if the crimes occurred during the same criminal transaction. *Id.*

Here, the felonious assault conviction is based on Thomas’s testimony that defendant “stomped” him on the head: This constitutes an assault with a weapon, i.e., defendant’s shoes. Defendant was also convicted of armed robbery with regard to Thomas. According to Thomas, defendant initially held a gun to his face, forced him into the kitchen, and placed him in restraints before leaving for another part of the house. When defendant returned to the kitchen, he sat on Thomas’s back, went through his pockets, and took all of his money and identification. Defendant then proceeded to “stomp” Thomas in the back of his head with his shoe. Accordingly, this case is distinguishable from *Yarbrough*, *supra* at 334-335, in which both the assault with the gun and the defendant’s actions in beating and shoving the victim occurred as the complainant’s property was being taken. Here, although the assault with the shoe occurred just seconds after the robbery was complete, it constituted a separate and distinct event because it was not required to complete the robbery. Therefore, we hold that defendant’s convictions for felonious assault and armed robbery do not violate the constitutional prohibition against double jeopardy.² Moreover, defendant admitted being at the house, and therefore, no prejudice is apparent.

² Defendant also claims in propria persona that he was denied his Sixth Amendment right to counsel at a post-indictment photographic lineup. However, defendant failed to object at trial to
(continued...)

Affirmed.

/s/ Helene N. White
/s/ Henry William Saad
/s/ Christopher M. Murray

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testimony regarding the photographic lineup or to his in-court identification by the complainants. Therefore, this issue is not preserved for review. *People v McCray*, 245 Mich App 631, 637-638; 630 NW2d 633 (2001).